



April 29, 2022

Via: [AIframework@nist.gov](mailto:AIframework@nist.gov)

Charles H. Romine, Director  
Information Technology Laboratory  
National Institute of Standards and Technology  
U.S. Department of Commerce  
100 Bureau Drive  
Gaithersburg, MD 20899

Re: Request for Comments on the AI Risk Management Framework: Initial Draft

Dear Director Romine:

The E-Merchants Trade Council, Inc. (EMTC) appreciates the opportunity to provide comments on the AI Risk Management Framework: Initial Draft (Initial Draft) issued by the National Institute of Standards and Technology (NIST) released on March 17, 2022.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

Based on EMTC's mission and membership, we believe that the best way for MSMEs to engage in global trade and comply with the myriad of U.S. and global trade laws is the development of Machine Learning (ML) and Artificial Intelligence (AI) technology to manage the complexity of trade laws for MSMEs.

### **General Comments**

Since the passage of the Customs Modernization Act as title IV of North American Free Trade Agreement (NAFTA) and U.S. leadership on supply chain security in the wake of the 9/11 attack, customs administrations around the world have taken a risk management approach to compliance with international trade laws and supply chain security. Therefore, EMTC supports NIST's risk management approach to AI systems.

### **Specific Comments**

#### **1. Whether the AI RMF appropriately covers and addresses AI risks, including with the right level of specificity for various use cases**

EMTC understands that the Initial Draft is designed to provide an overall general framework for a high-level discussion of risk management for AI systems. As such, the Initial Draft provides important

parameters and considerations as a foundation for AI risk management discussions. However, as we note below, when applying the guiding principles in the Initial Draft to a specific federal agency, area of law, or AI use case, the Initial Draft raises more questions as to how the various stakeholder groups will interact within the parameters of the risk management framework.

## **2. Whether the AI RMF is flexible enough to serve as a continuing resource considering evolving technology and standards landscape**

Companies in the digital economy, whether software companies or e-commerce market platforms and e-sellers, need a framework that allows for flexibility to accommodate different business models and AI systems development. Often, ML and AI systems are developed totally for commercial purposes which are later adapted or used to fulfill a regulatory requirement simply because there is nothing to “fill the gap.” As a result, the Initial Draft does not appear to contemplate this scenario within the AI Risk Management Framework.

## **3. Whether the AI RMF enables decisions about how an organization can increase understanding of, communication about, and efforts to manage AI risks**

EMTC believes that NIST underestimates the challenges that small-medium size businesses will face in participating as a stakeholder group as an intended audience involved in the risk management process. EMTC understands that federal agencies developing or utilizing AI systems need to integrate the principles set forth in the Initial Draft into the agency’s risk management strategy to further its statutory mission as noted:

### 4.2.3 Organizational Integration

The AI RMF is not a checklist nor a compliance mechanism to be used in isolation. It should be integrated within the organization developing and using AI technologies and be incorporated into enterprise risk management; doing so ensures that AI will be treated along with other critical risks, yielding a more integrated outcome and resulting in organizational efficiencies.

Organizations need to establish and maintain the appropriate accountability mechanisms, roles and responsibilities, culture, and incentive structures for risk management to be effective. Use of the AI RMF alone will not lead to these changes or provide the appropriate incentives. Effective risk management needs organizational commitment at senior levels and may require significant cultural change for an organization or industry.

Small to medium-sized organizations face different challenges in implementing the AI RMF than large organizations.

See AI Risk Management Framework: Initial Draft at: <https://www.nist.gov/system/files/documents/2022/03/17/AI-RMF-1stdraft.pdf>.

As a trade association that represents MSME e-sellers, EMTC believes that accountability and transparency with small-medium size enterprises will be a significant challenge. Currently, federal agency interaction with the private sector typically takes place through federal advisory committees under the Federal Advisory Committee Act (FACA), P.L. 92-463, 86 Stat. 770.

In the case of developing trade policy, implementation and operations takes places through fifteen (15) International Trade Advisory Committees (ITACs) administered by the U.S. Trade Representative (USTR) and Secretary of Commerce plus the Customs Operations Advisory Committee (COAC) jointly administered by the Secretary of Treasury and the Secretary of Homeland Security. Seats on these ITACs and COAC are political appointments that are reviewed at the Secretary level, and in the case of COAC, reviewed and approved by Congress. Moreover, the appointments require candidates to undergo a background check for security clearance and may require signing a non-disclosure agreement for any agency pre-decisional discussions and work product.

While we believe that federal agencies strive to include MSMEs in ITACs as much as possible, the ITACs are dominated by large companies with government affairs professionals or technical experts who have the support of corporate management and resources to participate in the quarterly meetings.

This current structure places MSMEs at a disadvantage as they are less likely to serve on a FACA that will be privy to early discussions among core stakeholder groups (e.g., AI System Stakeholders, Operators & Evaluators Stakeholders) and they are more likely to be the target of AI systems as these technologies will be deployed by federal agencies to regulate MSMEs who are often “under the radar” of current risk management technologies and techniques. Therefore, we believe that future NIST documents (e.g., draft companion document citing AI risk management practices) should expand guidance concerning engaging External Stakeholders in AI risk management.

**4. Whether the functions, categories, and subcategories are complete, appropriate, and clearly stated**

EMTC has no comment at this time.

**5. Whether the AI RMF is in alignment with or leverages other frameworks and standards such as those developed or being developed by IEEE or ISO/IEC SC42**

EMTC has no comment at this time.

**6. Whether the AI RMF is in alignment with existing practices, and broader risk management practices**

EMTC has no comment at this time.

**7. What might be missing from the AI RMF**

EMTC appreciates that the Initial Draft was developed as a general discussion of AI systems and not specific applications of AI. However, EMTC believes that it would be helpful for NIST to explore how AI Risks and Trustworthiness applies to different federal agency missions, such as law enforcement, national security, health and safety, revenue protection, and environmental protection. In each of these areas, federal agencies have different standards of risk in carrying out their statutory mission. Therefore, special attention should be paid to how federal agencies can apply the Guiding Principles of fairness, accountability, and transparency where federal statute protects agencies’ “sources and methods” if AI systems are designed to augment those resources.

**8. Whether the soon to be published draft companion document citing AI risk management practices is useful as a complementary resource and what practices or standards should be added**

As noted above, EMTC believes that if NIST produces a draft companion document citing AI risk management practices, it should provide guidance concerning engaging External Stakeholders in AI risk management and where possible cite case studies and examples.

**9. Others?**

EMTC believes that at some point NIST will need to address who and how AI systems are to be certified, particularly AI systems used to enable the private sector to comply with federal regulatory requirements. In particular, who will be accountable for the accuracy of the AI system, and would this need to be certified? Would there be acceptable methodologies and minimum thresholds for accurate regulatory compliance (e.g., applying the correct tariff classification to an imported product)? Also, certifying entities may or may not be traditional standards organizations as AI systems take on a larger portfolio of functions. While we appreciate that the principals set out in the Initial Draft document will guide organizations in their evaluation of AI systems and that the due diligence appropriate to the subject matter will vary, we believe that as an agency with a mission to “advancing measurement science, standards, and technology,” NIST will need to provide further guidance concerning certification of AI systems.

**Conclusion**

EMTC believes that NIST’s risk management approach presents the United States with a great opportunity to integrate AI with its trade policy to help underserved communities engage in global trade without the heavy costs of government regulation.

EMTC appreciates the opportunity to comment on the Initial Draft of AI Risk Management Framework, and we are happy to discuss the ideas expressed above in more detail.

Sincerely,



Marianne Rowden  
Chief Executive Officer